April 1, 2004

D.T.E. 03-129

Petition of Boston Edison Company d/b/a NSTAR Electric, pursuant to G.L. c. 164, § 14, for authorization to issue long-term debt securities not to exceed $500 million; for an exemption from the advertising requirements of G.L. c. 164, § 15; and for an exemption from the par value requirements of G.L. c. 164, § 15A.

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FOR: BOSTON EDISON COMPANY
d/b/a NSTAR ELECTRIC
Petitioner

I. INTRODUCTION

On December 12, 2003, Boston Edison Company d/b/a NSTAR Electric ("BECo" or "Company"), pursuant to G.L. c. 164, § 14, filed a petition with the Department of Telecommunications and Energy ("Department") requesting approval of a financing plan to issue and sell from time to time, on or before December 31, 2005, long-term debt securities in an aggregate amount not to exceed $500,000,000. The Company also seeks exemptions from the advertising requirements of G.L. c. 164, § 15 and the par value requirements of G.L. c. 164, § 15A.

Pursuant to notice duly issued, a public hearing was held at the Department's offices in Boston on February 26, 2004. No petitions for leave to intervene were filed. At the hearing, the Company presented two witnesses in support of its petition: Emilie G. O'Neil, director of corporate finance and cash management for the Company and Philip J. Lembo, assistant treasurer for the Company. The evidentiary record consists of 36 exhibits and six responses to Department record requests.

II. DESCRIPTION OF THE PROPOSED FINANCING

A. Long-Term Debt Issuance

1. Principal and Term

BECo seeks authority to issue and sell, from time to time on or before December 31, 2005, long-term debt securities in an aggregate amount up to $500,000,000 (Exh. BE-1, at 2). These debt instruments will take the form of: (1) unsecured notes or debentures; (2) loans from a bank or a syndicate of banks; (3) loans from other institutional or government lenders;

or (4) loans from a municipal agency (Exh. BE-1, at 5-6). The Company projects that between $250,000,000 and $300,000,000 in long-term debt will be issued upon receipt of approval by the Department, with the remaining amount to be issued, if markets are favorable, during the latter part of 2004 and in 2005 (Tr. at 10-11). The Company proposes that the debt instruments have a maturity date greater than one year but not later than 40 years from the date of issuance[1] (Exh. BE-1, at 8).

The Company avers that a two-year financing plan provides sufficient flexibility to issue securities to meet its forecasted needs (Exh. BE-1, at 7). The Company asserts that the proposed financing plan allows for the flexibility to issue a mix of securities with both price and non-price terms tailored to the demands of the marketplace (Exh. DTE 1-6). BECo contends that, absent this flexibility, Department approval of individual security issuances would be required (Exh. BE-1, at 8).

2. Interest Rates

Depending on the form of issuance, the proposed securities will carry either a fixed interest rate or an adjustable interest rate which will vary with either a market index designated at the time of issuance or a market auction mechanism (Exh. BE-1, at 8-9). BECo proposes a maximum effective interest rate of ten percent for both the fixed and variable rate instruments to be issued (Exhs. BE-1, at 7; DTE 1-4; DTE 1-5; DTE 3-1; Tr. at 55). BECo claims that

1 While BECo does not anticipate issuing debt with a maturity greater than 30 years, the Company argues that approval of a 40-year maximum term provides it sufficient flexibility to issue debt at the most advantageous interest rate (Exh. DTE 3-9).

these rates were determined independently of one another based on market conditions (Exhs. DTE 1-4; DTE 3-1; Tr. at 54-55).

a. Fixed Interest Rate

The Company asserts that its proposed cap of ten percent for fixed rate debt provides sufficient flexibility to address market volatility and, therefore, is reasonable (Company Brief at 8, citing Exh. DTE 3-1; RR-DTE-6; Boston Edison Company, D.T.E. 00-62, at 13 (2000)). In support of this assertion, BECo argues that over the past five years, 30-year United States Treasury bonds, which are considered the underlying base security for utility long-term debt, have fluctuated between 4.36 percent and 6.49 percent (Exh. BE-1, at 8). BECo argues that the fluctuations in interest rates is continuing, noting that the interest rate for fixed rate 30-year A-rated utility bonds has decreased from approximately 6.25 percent at the time the Company filed its petition in this case to 5.7 percent (Exh. BE-1, at 8; RR-DTE-6). The Company also states that over the past five years, long-term debt yields for electric utilities have ranged between 5.11 percent and 8.51 percent (Exhs. BE-1, at 8). Based on these considerations, BECo contends that the ten percent maximum interest rate cap sought in this proceeding for fixed rate debt is reasonable, in line with current market conditions, and will allow the Company to issue securities at the most advantageous rates throughout the proposed two year financing period (Exh. DTE 3-1; Company Brief at 8).

b. Variable Interest Rate

BECo proposes a maximum effective interest rate of ten percent per annum for the variable rate instruments to be issued (Exhs. BE-1, at 7; Tr. at 55). As a basis for determining the market index rate for variable rate debt, the Company anticipates using the three-month London Interbank Offered Rates ("LIBOR") index plus a fixed spread [2] (Exhs. DTE 1-7; DTE 3-6). Based on the current three-month LIBOR index of 1.12 percent and a proposed spread of 15 basis points, the Company anticipates that variable rate debt could be issued for approximately 1.27 percent (Tr. at 23-24; RR-DTE-2). Using a projected May 29, 2004 LIBOR index of 1.75 percent, the variable rate interest would increase to approximately 1.9 percent (Exh. DTE 3-1; Tr. at 24-25).

Despite these projections, BECo argues that it is necessary for the interest rate cap to be sufficiently high for variable rate debt to allow the interest rate to vary over the life of the debt without (1) undue risk to the bondholder that the maximum rate will limit its expected return and (2) undue risk to the Company that the rate could increase without limit (Exh. DTE 3-1). According to the Company, investors are reluctant to agree to a cap on a variable rate debt as they believe the Company should assume all interest rate movement risk when the interest rate is variable (Tr. at 25-26; Company Brief at 8).

BECo states that the proposed maximum rate for variable rate debt will assure potential investors that the actual interest rate will not exceed the maximum interest rate cap, even if interest rates rise, and consequently investors will refrain from demanding a higher interest rate or other compensating features from the Company (Exh. DTE 1-6; Tr. at 24-25; Company Brief at 8). The Company considers a ten percent interest cap for variable rate debt to be

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[2] BECo anticipates that an approximate 15 basis point spread would be added to the LIBOR at the time of issuance to determine the rate of the yield coupon. This spread would stay fixed over the next two years (Tr. at 24).

reasonable over the entire two-year period of its financing plan because it (1) is consistent with current market conditions, (2) provides a sufficient margin to allow for fluctuations in the market over the proposed two year financing period, and (3) facilitates the sale of variable rate debt to the investment community (Company Brief at 7-9, citing Exh. DTE 3-1; Tr. at 25-26, 54; RR-DTE-6).[3]

3. Use of Proceeds

The Company intends to apply the proceeds of the proposed financing plan to satisfy its projected financing needs through December 31, 2005, including capital expenditures and external refinancing requirements (Exh. BE-1, at 6-7). Specifically, BECo proposes to apply the net proceeds of the issuances to: (1) the payment at maturity of certain outstanding long-term indebtedness and equity securities; (2) the refinancing of long-term debt and/or equity securities; (3) the payment of capital expenditures incurred for extensions, additions and improvements to the Company's plant and properties; (4) the refinancing of short-term and long-term securities; (5) required debt service reserve funds and similarly required funds for any tax-exempt debt to be issued; and/or (6) general working capital purposes (Exh. BE-1, at 17). BECo forecasts its capital expenditures for the period 2004 through 2005 to be approximately $440,000,000, with another $100,000,000 in long-term debt scheduled to

[3] The Company states that because the maturities on most variable rate securities issued today are for five years or less, the interest rate cap on variable rate securities does not need to be as high as in past years when variable rate debt could be issued with maturities of ten years or more (Tr. at 54). BECo asserts that, if the current market allowed issuance of variable rate debt with a longer maturity, the Company would likely have requested an interest rate cap of 20 percent instead of the proposed ten percent (Tr. at 55).

mature on October 15, 2005 (Exhs. BE-1, at 3, 6; DTE 1-10; Tr. at 13). During this same period, the Company estimates its cash flow from operations to be approximately $560,000,000, a portion of which would be used to meet the Company's financing needs and the remaining financing needs would be funded through external borrowings (Exh. BE-1, at 6-7).

B. Exemption from Competitive Bidding Requirements of G.L. c. 164, § 15

The Company seeks an exemption from the competitive bidding requirements of G.L. c. 164, § 15 pertaining to the issuance of debt securities (Exh. BE-1, at 17). The Company states that, depending on the type of security and market conditions at the time of issuance, the securities will be sold in (1) one or more public offerings through one or more underwriters or agents, (2) in private offerings to qualified investors, or (3) in connection with the establishment of loan facilities with one or more institutional or government lenders (Exh. BE-1, at 9).

The Company argues that a negotiated offering process is more responsive to changes in market conditions than a competitive bidding or a private placement process (Exh. BE-1, at 10-11; RR-DTE-5, at 1). First, given what the Company considers to be current and continuing high volatility in the financial markets, BECo argues that access to underwriters' expertise in marketing securities is particularly important to ensure a successful pre-marketing effort and to tailor the security to market expectations (Exh. DTE 1-2; RR-DTE-5, at 3). BECo maintains that reliance on a competitive bid process would deprive the Company of the knowledge and expertise of the underwriter both from a marketing perspective (i.e., preparation of the prospectus and pre-marketing) and from a pricing perspective (Exhs. BE-1, at 14; DTE 1-17; Tr. at 43-44). According to the Company, underwriters will not employ strong pre-marketing efforts as part of a competitive bid process because the potential bidders cannot be assured that they ultimately will be awarded the securities (Exh. DTE 1-2; Tr. at 47-48). Consequently, during times of market volatility, the Company argues that a lack of pre-marketing efforts in a formal bid transaction may lead to less aggressive bids and higher interest costs which will ultimately be absorbed by customers (Exhs. DTE 1-2; DTE 1-17; Tr. at 47-48; RR-DTE-5, at 3; Company Brief at 11-12).

Second, BECo argues that the competitive bidding requirement would inhibit the Company's ability to vary the form and timing of its issuances, "which is necessary in today's fluctuating financial markets" (Company Brief at 10). For example, the Company states that under a competitive bid process it is unable to change the timing, type, and maturity of the security if the capital markets unexpectedly move in a different direction from the one assumed during the solicitation process, as occurred during the early 1990s (Tr. at 45-46).[4] If market conditions change while a formal process is pending, the Company argues that it would have to stop the bidding process and reissue the formal solicitation, ultimately resulting in lost opportunities to and additional losses for ratepayers (Company Brief at 11, citing RR-DTE-5, at 1; Tr. at 47). For example, BECo states that given a $500 million debt issuance, an

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[4] BECo argues that in 1994, recognizing that cost of capital may be affected by delays in an offering, the Securities and Exchange Commission ("SEC") repealed its competitive bidding requirements for companies in a registered holding company system to allow them to choose the marketing method that provided the most advantageous terms (Company Brief at 12, citing SEC Release 35-26031 (April 20, 1994)).

increase in interest rates of as little as ten basis points would result in a $500,000 increase in additional interest expense (RR-DTE-5, at 3). Moreover, the Company also estimates that the additional administrative cost associated with a competitive bid process is approximately $10,000 more than administrative costs associated with a negotiated offer process (Tr. at 47; RR-DTE-5, at 3; Company Brief at 11). Based on these considerations, the Company contends that its request for an exemption from the requirements of G.L. c. 164, § 15 is consistent with Department precedent, will benefit ratepayers, and is in the public interest (Exh. BE-1, at 14, citing Boston Edison Company, D.P.U. 92-253-A at 21 (1993)); Company Brief at 10-12).

C. Exemption from Par Value Requirements of G.L. c. 164, § 15A

The Company requests an exemption from the par value requirements of G.L. c. 164, § 15A (Exh. BE-1, at 17). The Company explains that its debt securities are generally issued with a coupon rate equal to either a multiple of one-eighth of one percent or .05 percent (Exh. DTE 1-1). In contrast, the Company states that financial markets price debt securities by reference to a comparable maturity United States Treasury security, which are priced in increments of .01 percent (Exh. DTE 1-1). Therefore, the face value of the Company's debt securities must often be discounted by a very small amount to incorporate the finer pricing of securities in the market (Exh. DTE 1-1).[5]

The Company contends that, without the exemption, BECo would have to wait until the coupon equaled the market yield before issuing debt securities (Tr. at 57). Because market

[5] The Company intends to amortize any debt discounts over the life of the new issuance series (Exh. BE-1, at 16; Company Brief at 15).

yields are denominated on single basis points and coupon rates are denominated by either an eighth or five basis points, BECo states that it would be difficult to get a market yield that matched coupon rates (Tr. at 57-58). BECo avers that an exemption from G.L. c. 164, § 15A will provide the Company more flexibility to issue the debt regardless of the daily vagaries of the financial market (Exh. DTE 1-1). The Company maintains that this pricing method is consistent with Department precedent and is in the public interest (Company Brief at 14, citing Boston Edison Company, D.T.E. 00-62, at 4 (2000); Southern Union Company, D.T.E. 01-32, at 8, 12 (2001); Boston Gas Company, D.P.U. 92-127, at 8 (1992); Boston Edison Company, D.P.U. 91-47, at 12-13 (1991); Bay State Gas Company, D.P.U. 91-25, at 10 (1991)).

III. CAPITAL STRUCTURE

The Company states that its capitalizable utility plant, as of September 30, 2003, was $2,876,142,223 (Exh. BE-3). The accumulated depreciation against this plant is $867,973,621 (Exh. BE-3). Thus, as of September 30, 2003, the Company has a net utility plant of $2,008,168,602 (Exhs. BE-3; BE-4).

As of September 30, 2003, the Company reported a total capitalization of $1,967,408,674, consisting of $821,000,000 in long-term debt, $43,000,000 in preferred stock, and $1,103,408,674 in common equity (Exhs. BE-3; BE-4). On the same date, the Company's common equity balance consisted of $75 in common stock, $278,795,159 in premium on common stock, $505,159,914 in retained earnings and $405,485 in surplus invested in plant (Exh. BE-1, at 3; BE-4). As a result, on September 30, 2003, the Company's capital structure consisted of 49.81 percent long-term debt, 2.61 percent preferred stock and 47.58 percent common stock (Exhs. BE-1, at 3-5; BE-4).[6] The Company's total reported capitalization, excluding retained earnings, amounted to $1,142,795,234 (Exh. BE-4). Therefore, the Company concluded that it would have $865,373,368 more in plant than securities outstanding, thereby meeting the requirements of the net plant test (Exh. BE-4).

IV. STANDARD OF REVIEW

A. Long-Term Debt and Preferred Securities Issuance

In order for the Department to approve the issuance of stocks, bonds, coupon notes, or other types of long-term indebtedness[7] by an electric or gas company, the Department must determine that the proposed issuance meets two tests. First, the Department must assess whether the proposed issuance is reasonably necessary to accomplish some legitimate purpose in meeting a company's service obligations, pursuant to G.L. c. 164, § 14. Fitchburg Gas & Electric Light Company v. Department of Public Utilities, 395 Mass. 836, 842 (1985) ("Fitchburg II"), citing Fitchburg Gas & Electric Light Company v. Department of Public Utilities, 394 Mass. 671, 678 (1985) ("Fitchburg I"). Second, the Department must determine

6 Excluding retained earnings, the Company's capital structure as of September 30, 2003 consisted of 71.84 percent long-term debt, 3.76 percent preferred stock, and 24.40 percent common stock (Exhs. BE-1, at 3-5; BE-4).

7 Long-term refers to periods of more than one year after the date of issuance. G.L. c. 164, § 14.

whether the Company has met the net plant test.[8] Colonial Gas Company, D.P.U. 84-96 (1984).

The Supreme Judicial Court has found that, for the purposes of G.L. c. 164, § 14, “reasonably necessary” means “reasonably necessary for the accomplishment of some purpose having to do with the obligations of the company to the public and its ability to carry out those obligations with the greatest possible efficiency.” Fitchburg II at 836, citing Lowell Gas Light Company v. Department of Public Utilities, 319 Mass. 46, 52 (1946) (“Lowell Gas”). In cases where no issue has been raised about the reasonableness of management decisions regarding the requested financing, the Department limits its G.L. c. 164, § 14 review to a determination of reasonableness of the Company’s proposed use of the proceeds of a stock issuance. Canal Electric Company, et al., D.P.U. 84-152, at 20 (1984); see, e.g., Colonial Gas Company, D.P.U. 90-50, at 6 (1990). The Fitchburg I and II and Lowell Gas cases also established that the burden of proving that an issuance is reasonably necessary rests with the company proposing the issuance, and that the Department's authority to review a proposed issuance "is not limited to a 'perfunctory review.’" Fitchburg I at 678; Fitchburg II at 841, citing Lowell Gas at 52.

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[8] The net plant test is derived from G.L. c. 164, § 16. When the Department approves an issue of new stock, bonds, or other securities by a gas or electric company, if it determines that the fair structural value of the plant and of the land and the fair value of the nuclear fuel, gas inventories, or fossil fuel inventories owned by such company is less than its outstanding stock and debt, it may prescribe such conditions and requirements as it deems best adapted to make good within a reasonable time the impairment of the capital. See G.L. c. 164, § 16.

Regarding the net plant test, a company is required to present evidence that its net utility plant (original cost of capitalizable plant, less accumulated depreciation) equals or exceeds its total capitalization (the sum of its long-term debt and its preferred and common stock outstanding) and will continue to do so following the proposed issuance. Colonial Gas Company, D.P.U. 84-96, at 5 (1984). Where issues concerning the prudence of the Company's capital financing have not been raised or adjudicated in a proceeding, the Department's decision in such a case does not represent a determination that any specific project is economically beneficial to a company or to its customers. In such circumstances, the Department's determination in its Order may not in any way be construed as ruling on the appropriate ratemaking treatment to be accorded any costs associated with the proposed financing. See, e.g., Boston Gas Company, D.P.U. 95-66, at 7 (1995).

B. Exemption from G.L. c. 164, §§ 15 & 15A

Pursuant to G.L. c. 164, § 15, an electric or gas company offering long-term bonds or notes in excess of $1,000,000 in face amount payable at periods of more than five years after the date thereof must invite purchase proposals through newspaper advertisements. The Department may grant an exemption from this advertising requirement if the Department finds that an exemption is in the public interest. G.L. c. 164, § 15. The Department has found it in the public interest to grant an exemption from the advertising requirement where there has been a measure of competition in private placement. See, e.g., Berkshire Gas Company, D.P.U. 89-12, at 11 (1989); Eastern Edison Company, D.P.U. 88-127, at 11-12 (1988); Western Massachusetts Electric Company, D.P.U. 88-32, at 5 (1988). The Department also has found that it is in the public interest to grant a company an exemption from the advertising requirement when a measure of flexibility is necessary in order for a company to enter the bond market in a timely manner. See, e.g., Western Massachusetts Electric Company, D.P.U. 88-32, at 5 (1988). However, G.L. c. 164, § 15 requires advertising as the general rule, and waiver cannot be automatic, but must be justified whenever requested. Bay State Gas Company, D.T.E. 02-73, at 14.

Pursuant to G.L. c. 164, § 15A, a company is required to sell long-term bonds, debentures, notes, or other evidence of indebtedness at no less than the par value or face amount unless sale at less than par value is found by the Department to be in the public interest. See, e.g., Boston Edison Company, D.P.U. 91-47, at 13 (1991). The Department has found that it is in the public interest to grant an exemption from the par value requirement where market conditions make it difficult at times for a company to price a particular issue at par value and simultaneously offer an acceptable coupon rate to prospective buyers. Bay State Gas Company, D.P.U. 91-25, at 9 (1991). The Department also has found that it is in the public interest to authorize the issuance of debt securities below par value where this technique offers a company enhanced flexibility in entering the market quickly to take advantage of prevailing interest rates, particularly if this benefits the company's ratepayers in the form of lower interest rates and a lower cost of capital. Id.; see also Boston Gas Company, D.P.U. 92-127, at 8 (1992); Boston Edison Company, D.P.U. 91-47, at 12-13 (1991). If the Department authorizes a company to issue debt securities at less than par value, the Department may establish the method by which the company is required to amortize any discount.[9] G.L. c. 164, § 15A; see, e.g., Boston Gas Company, D.P.U. 92-127, at 8; Boston Edison Company, D.P.U. 91-47, at 15.

V. ANALYSIS AND FINDINGS

A. Issuance of Long-Term Debt

1. "Reasonably Necessary" Standard

The Company has stated that its proposal to issue up to $500,000,000 principal amount of long-term debt is for the purpose of selling the securities and using the proceeds to retire outstanding long-term debt and equity securities, to refinance short-term and long-term debt, for the payment of capital expenditures for additions to property, plant, and equipment, and for general working capital purposes (Exh. BE-1, at 2; Tr. at 10). The Department has found that issuing debt for the purposes of paying down short-term debt and refinancing long-term debt is a "legitimate utility purpose" as contemplated by G.L. c. 164, § 14. Blackstone Gas Company, D.T.E. 03-65, at 4 (2003); Western Massachusetts Electric Company, D.T.E. 02-49, at 10 (2003); New England Power Company, D.P.U. 95-101, at 11 (1995). Likewise, the Department has found that redeeming existing securities and funding utility operations is a customary purpose of securities issuances. Southern Union Company, D.T.E. 03-3, at 18 (2003); Berkshire Gas Company, D.P.U. 96-64, at 8-9 (1996). Further, the Department has found that issuing securities to fund general working capital requirements is a legitimate utility purpose. Cambridge Electric Light Company, D.P.U. 96-91, at 7

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9 The discount is the difference between the par value of a bond, note, or other debt security and the actual issue price when the actual issue price is less than par value.

(1996); Commonwealth Electric Company, D.P.U. 92-268, at 6, 8 (1993); Eastern Edison Company, D.P.U. 93-24, at 8, 12 (1993). Because the Company's stated purposes of issuing said debt fall within these parameters, the Department finds that the Company's proposed issuance of long-term debt securities in an aggregate amount up to $500,000,000 is reasonably necessary to accomplish a legitimate purpose in meeting the Company's service obligations in accordance with G.L. c. 164, § 14.

2. Net Plant Test

With regard to the net plant test, the Department requires companies to demonstrate that their net utility plant equals or exceeds their total capitalization, thereby supporting the additional amount of financing, pursuant to G.L. c. 164, § 16. Colonial Gas Company, D.P.U. 84-96, at 5 (1984). The purpose of the net plant test is both to protect ratepayers from excessive rates associated with overcapitalization and to assure the creditors of a utility that the company has sufficient tangible assets to cover its liabilities. Boston Gas Company, D.T.E. 03-40, at 321 (2003); Colonial Gas Company, D.P.U. 1247-A at 7 (1982); Report of the Department of Public Utilities Relative to the Capitalization of Gas and Electric Companies, Senate Document No 315, at 8-15 (January 1922). Under the net plant test, a company must present evidence showing that its net utility plant (utility plant less accumulated depreciation) is equal to or greater than its total capitalization (the sum of debt, preferred stock and common stock outstanding). Colonial Gas Company, D.P.U. 84-96, at 5 (1984).

The Company proposes to include $57,531,319 in construction work in progress ("CWIP") as part of its net capitalizable plant (Exh. DTE 2-2, at 3; Tr. at 40-41; RR-DTE-4).

The Department has previously found that CWIP should be excluded from a company's plant and capitalization accounts for purposes of the net plant test calculation because the term "fair structural value of the plant," as used in G.L. c. 164, § 16, includes only plant that is used and useful in providing utility service. Southern Union Company, D.T.E. 03-64, at 9 (2003); see also Southern Union Company, D.T.E. 01-52, at 9 (2001); New England Power Company, D.P.U. 92-189, at 7 (1992); Colonial Gas Company, D.P.U. 84-96, at 8 (1984). Consistent with this precedent, $57,531,319 in CWIP must be removed from the Company's net capitalizable plant for purposes of calculating the net plant test (Exh. BE-3; RR-DTE-4).

With this exclusion of CWIP, the Company's net capitalizable plant as of September 30, 2003 for calculating the net plant test is $1,950,637,283, while its total capitalization is $1,142,795,368, resulting in an excess of net utility plant over outstanding capital of $807,841,915 (Exh. BE-4). The Department finds that the Company's current plant investment is, therefore, sufficient to support the proposed issuance of $500,000,000 in long-term debt securities.[10]

3. Maximum Interest Rates

BECo proposes a maximum effective interest rate of ten percent for both the fixed and variable rate instruments to be issued. The Department recognizes that the potential for

[10] Issues concerning the prudence of the Company's capital financing have not been raised in this proceeding, and the Department's decision in this case does not represent a determination that any project is economically beneficial to the Company or its customers. The Department's determination in this Order is not in any way to be construed as a ruling relative to the appropriate ratemaking treatment to be accorded any costs associated with the proposed financing.

financial market volatility requires the allowance of a measure of flexibility in setting maximum interest rates for long-term debt securities. Berkshire Gas Company, D.T.E. 03-89, at 26 (2004); Southern Union Company, D.T.E. 01-32, at 12 (2001).

The Company contends that its proposed maximum rate of ten percent for fixed rate debt is consistent with current market rates for similarly rated securities, historical rate trends and interest rate forecasts (Exh. DTE 1-4; Tr. at 9). The current interest rate for 30-year A-rated utility bonds is approximately 6.25 percent, and long-term debt yields have ranged between 5.11 percent and 8.51 percent over the past five years (Exhs. BE-1, at 8; BE-5B). A spread between the Company's fixed rate debt and the proposed maximum interest rate is necessary to provide some cushion against interest rate increases during the two years that BECo's financing plan is in effect (Exhs. BE-5A; BE-5B; Tr. at 49-50). The ten percent cap provides an adequate cushion to allow for market fluctuations over the proposed two year period.

In view of historic Treasury and utility bond yields, current market conditions and long-term economic expectations, the Department finds that the Company has appropriately evaluated the market for fixed interest rate securities in determining the proposed maximum interest rate for these instruments. See Southern Union Company, D.T.E. 03-64, at 11-12 (2003). Therefore, the Department finds a maximum interest rate of ten percent per annum for the issuance of long-term fixed rate debt securities is consistent with the public interest.

In the case of variable rate debt, the Department has recognized that the maximum rate must be sufficient to allow the interest rate to vary over the life of the debt instrument without undue risk to either the investor or the issuer. Boston Edison Company, D.P.U. 89-44, at 4-5 (1989). There is a direct correlation between the term of maturity for a variable rate instrument and the required maximum interest rate, in that a debt instrument with a longer term may require a greater maximum interest rate than a shorter term instrument (Tr. at 55). The present market for variable rate debt is largely confined to instruments with a maturity of five years or less, suggesting that the maximum rate may be set lower than in previous financings (Tr. at 54). Nonetheless, we are persuaded that some allowance for interest rate fluctuations in the market over the next two years remains reasonable. In view of the general shift in the financial markets at this time towards use of a three-month LIBOR index, along with current and projected LIBOR rates, as well as the need for the maximum interest rate to be sufficient to provide for interest rate volatility over the life of debt issued during the two-year term of the Company's financing plan, the Department finds that a maximum variable interest rate of ten percent per annum for the issuance of long-term debt securities is consistent with the public interest.[11]

B. Exemption From G.L. c. 164, § 15

BECo represents that an exemption from the competitive bid provisions of G.L. c. 164, § 15 is appropriate because a competitive bid process limits the Company's ability to price and market the securities, as well as to determine the form and timing of an issuance. The Company has demonstrated that underwriting assistance is an important element in evaluating

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[11] A combination of current market interest rates, market volatility and maturities of long-term debt makes it reasonable that in the instant case, the interest rate cap for both fixed and variable rate securities is the same.

market conditions and the appropriate structure of a transaction (Exh. BE-1, at 10-11, 14; Tr. at 43-46). The negotiated public offering process proposed by the Company offers greater access to underwriter expertise in marketing securities, particularly when markets are volatile or limited and when the proposed debt instruments are complex (Exh. BE-1, at 10-14; Tr. at 43-46; RR-DTE-5, at 3). This expertise would allow the Company to readily identify market demand and timing of placement, with resultant interest savings that ultimately would be enjoyed by ratepayers through lower capital costs (RR-DTE-5, at 3).

In contrast, the Company has presented credible evidence that in a competitive bid situation, underwriters tend to confine bids to a particular interest rate and undertake little pre-marketing efforts (Exh. DTE 1-2; Tr. at 43-44, 47-48). Moreover, confining BECo's debt placement to a competitive bid process may reduce the Company's ability to market both complex debt instruments and debt instruments in general, during volatile market conditions (Exh. BE-1, at 10-14; Tr. at 43-46; RR-DTE-5, at 3). In the present market, a competitive bid process may result in the issuance of debt instruments that, even with small interest rate differences, result in higher interest costs to the Company, and ultimately to ratepayers (RR-DTE-5, at 3).

The Department finds that the Company has demonstrated that the benefits of a competitive solicitation process are enjoyed by its ratepayers through the negotiated public offering process, and that the additional cost and time associated with a competitive solicitation process would not produce a more favorable result to ratepayers. Western Massachusetts Electric Company, D.T.E. 02-49, at 12 (2003). The Department further finds that the

Company has shown that a competitive bid process could jeopardize investor interest, ultimately jeopardizing the financial benefits available to ratepayers under the negotiated public offering process. Fitchburg Gas and Electric Light Company, D.T.E. 01-43, at 8 (2001); New England Power Company, D.T.E. 00-53, at 10 (2000). In this case, it is appropriate to allow the Company the flexibility offered by the negotiated public offering process in order to facilitate the Company's access to the capital markets. Boston Edison Company, D.T.E. 00-62, at 11 (2000). Therefore, based on the foregoing analysis, the Department finds that it is in the public interest to exempt the Company from the advertising requirements of G.L. c. 164, § 15.

C. Exemption From G.L. c. 164, § 15A

Regarding the Company's request for an exemption from the par value requirements of G.L. c. 164, §15A, the Department recognizes that investors rely on, and expect, such discounts to serve as a fine-tuning device to ensure that the coupon rate matches market expectations, thereby offering the Company increased flexibility in placing its issuances with prospective investors (Exh. DTE 1-1; Tr at 37). Consequently, this increased flexibility enables the Company to issue debt securities in a timely manner and take advantage of favorable market conditions. Berkshire Gas Company, D.T.E. 03-89, at 16-17 (2004); Southern Union Company, D.T.E. 01-32, at 8, 12 (2001); Boston Gas Company, D.P.U. 92-127, at 8 (1992); Boston Edison Company, D.P.U. 91-47, at 12-13 (1991); Bay State Gas Company, D.P.U. 91-25, at 10 (1991). Consistent with the requirements of G.L. c. 164, § 15A, the Company has proposed to amortize the amount of any discount from par value over the life of the new issuance series on a straight-line basis. For these reasons, the Department finds that it is in the public interest to exempt the Company from the par value requirements of G.L. c. 164, § 15A.

VI. ORDER

Accordingly, after due notice, hearing, and consideration, the Department

VOTES: That the issuance and sale, from time to time on or before December 31, 2005, by Boston Edison Company d/b/a NSTAR Electric, of long-term debt securities, in an amount not to exceed $500,000,000, is reasonably necessary for the purposes for which such issuance has been authorized; and further

VOTES: That the issuance and sale, from time to time on or before December 31, 2005, by Boston Edison Company d/b/a NSTAR Electric of long-term debt securities, in an amount not to exceed $500,000,000, at less than par value pursuant to G.L. c. 164, § 15A, is in the public interest, and that if a security is sold at less than par value, it is in the public interest to amortize the discount from par value over the life of the new issuance series on a straight-line basis; and it is

ORDERED: That the issuance and sale, from time to time on or before December 31, 2005, by Boston Edison Company d/b/a NSTAR Electric of long-term debt securities in an amount not to exceed $500,000,000 is reasonably necessary for the purposes for which such issuance has been authorized; and it is

FURTHER ORDERED: That such authorized long-term debt securities issued by Boston Edison Company d/b/a NSTAR Electric shall carry a fixed interest rate not to exceed an effective rate of ten percent per annum, or an adjustable rate to vary with a market index designated at the time of issue or in accordance with a market auction mechanism, but which will not exceed ten percent per annum; and it is

FURTHER ORDERED: That the net proceeds from such sale of all such securities shall be used for the purposes as set forth herein; and it is

FURTHER ORDERED: That Boston Edison Company d/b/a NSTAR Electric's issuance and sale, from time to time on or before December 31, 2005, of long-term debt securities, in an amount not to exceed $500,000,00, without complying with the competitive bidding provisions of G.L. c. 164, § 15, is in the public interest, and that such issuance and sale shall be exempt from the provisions of G.L. c. 164, § 15.

FURTHER ORDERED: That Boston Edison Company d/b/a NSTAR Electric's issuance and sale, from time to time on or before December 31, 2005, of long-term debt securities, in an amount not to exceed $500,000,000, at less than par value, is in the public interest, and such issuance and sale shall be exempt from the provisions of G.L. c. 164, § 15A; and that if a security is sold at less than par value, it is in the public interest to amortize the discount from par value over the life of the new issuance series on a straight-line basis; and it is

FURTHER ORDERED: That the Secretary of the Department shall within three days of the issuance of this Order cause a certified copy of it to be filed with the Secretary of the Commonwealth.

By Order of the Department,

__________/s/_______________________
Paul G. Afonso, Chairman

__________/s/_______________________
James Connelly, Commissioner

__________/s/_______________________
W. Robert Keating, Commissioner

__________/s/_______________________
Eugene J. Sullivan, Jr., Commissioner

__________/s/_______________________
Deirdre K. Manning, Commissioner

Appeal as to matters of law from any final decision, order or ruling of the Commission may be taken to the Supreme Judicial Court by an aggrieved party in interest by the filing of a written petition praying that the Order of the Commission be modified or set aside in whole or in part.

Such petition for appeal shall be filed with the Secretary of the Commission within 20 days after the date of service of the decision, order or ruling of the Commission, or within such further time as the Commission may allow upon request filed prior to the expiration of 20 days after the date of service of said decision, order or ruling. Within ten days after such petition has been filed, the appealing party shall enter the appeal in the Supreme Judicial Court sitting in Suffolk County by filing a copy thereof with the Clerk of said Court. Sec. 5, Chapter 25, G.L. Ter. Ed., as most recently amended by Chapter 485 of the Acts of 1971.